Supreme Court, U.S.
FILED

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No. _____

United States Court of Appeal For the Ninth Circuit
Case No. 00-17245
Case No. 00-17253
Case No. 0017287

In The

SUPREME COURT OF THE UNITED STATES

October Term, 2001

Fred Knox-PETITIONER

VS.

William J. Henderson, et. al.,-RESPONDENTS

Fred Knox-PETITIONER

VS.

Rich Lena, et. al.,-RESPONDENTS

On Petition for a Writ of Certiorari to the United States Court of Appeal for the Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI

Fred Knox, Counsel In Pro Se
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24 pp

QUESTIONS PRESENTED

Whether or not the United States Court of Appeal for the Ninth Circuit, by its decision as submitted December 17, 2001, and subsequent denial of Rehearing, has denied the Petitioner the due process of law, the protection of the privileges and immunities of law, and the equal protection of the laws as prohibited against by the Fifth and Fourteenth Amendments to the Constitution of the United States, the Court of Appeal's December 17, 2001 decision being a substantial and significant departure from accepted and usual judicial proceedings?

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LIST OF PARTIES

WILLIAM J. HENDERSON, United States Postmaster General, UNITED STATES POSTAL SERVICE, UNITED STATES POSTAL SERVICE'S SAN MATEO INFORMATION SERVICE CENTER, RICH LENA, BOB LONG, SUSY NAKAI, TOM NESBITT, DENNIS WILLIAMS, CELE GUITIERREZ, ROGER HISLE, FRED ALVARA, VIC CAPARROS, And JEANNE M.L. PLAYER, Judge, United States Equal Employment Opportunity Commission, as represented by David A. Shapiro, Jocelyn Burton, and Abraham A. Simmons of the United States Attorney's Office in San Francisco, California.

CHARLIE WAMBEKE of the American Postal Workers Union, AFL-CIO 6669, as represented by Susan L. Catler and Peter J. Leff of O'donnell, Schwarz & Anderson of Washington, D.C.

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MISCELLANEOUS

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

FRED KNOX-Petitioner

v.

WILLIAM J. HENDERSON, ET. AL.,-Respondents

FRED KNOX-Petitioner

v.

RICH LENA, ET. AL.,-Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

OPINIONS BELOW

The opinion of the United States Court of Appeal, from which the Petitioner petitions this United Supreme Court for a Writ of Certiorari, is included and attached hereto as APPENDIX A.

The denial of Petitioner's Petition for Rehearing by the United States Court of Appeal for the Ninth Circuit is included and attached hereto as APPENDIX B.

JURISDICTION

This is a Petition for a Writ of Certiorari to the United States Court of Appeal for the NinthCircuit. Jurisdiction is invoked under 28 U.S.C.(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment Five of the Constitution of the United States reads in pertinent part, "No person....shall be deprived of life, liberty, or property, without due process of law;...". **Fifth Amendment of the Constitution of the United States.**

Amendment Fourteen of the Constitution of the United States reads in pertinent part, "All persons born or naturalized in the United Sates and subject to the jurisdiction thereof, are citizens of the United States and of the stet wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." **Fourteenth Amendment, Constitution of the United States.**

"Cases in the courts of appeals may be reviewed by the Supreme Court...., By writ of certiorari granted upon the petition of any party to any civil or criminal case,...". **28 U.S.C. 1254(1).**

/////

STATEMENT

Proceedings Below

The Petitioner sought EEO counseling with regard to his initial claim of racial discrimination as against the United States Postal Service, the United States Postal Service's San Mateo Information Center, Rich Lena, Bob Long, Susy Nakai, Tom Nesbitt, and Cele Gutierrez, in 1995. The Petitioner filed his first complaint of racial discrimination with the EEO office in November of 1995. The EEO completed its investigation and notified the Petitioner that he had the right to request a hearing. The Petitioner's charges with regard to his first complaint was heard before Administrative Law Judge Jeanne M.L. Player on January 9, 1997.

The Administrative Law Judge found and concluded that the Petitioner has failed to prove that either the Postal Service or any of its employees had intentionally discriminated against the Petitioner because of his race, nor had any of the responding parties retaliated against the Petitioner for engaging in protected activity. No discrimination was found by the Administrative Law Judge, and all of the Petitioner's claims were dismissed.

In 1996, and concurrently with consideration of his intitial charge as filed by the Petitioner against the United States Postal Service, the Postal Service's San Mateo Information Center, and a number of its employees, the Petitioner requested of the Administrative Law Judge, Jeanne M.L. Player, that a subsequent complaint of racial discrimination and retaliation, filed by the Petitioner against the named respondents and others, to include Dennis Williams, Roger Hisle, and Fred Alvara, be consolidated with the Petitioner's initial complaint for hearing. Notwithstanding that the Petitioner argued before the Administrative Law Judge that

his second complaint was derivative of and directly related to the Petitioner's initial complaint, the Judge denied the Petitioner's request for consolidation.

In March of 1998, the Petitioner, a layperson, representing himself In Pro Se, filed a Complaint for Damages as based upon Racial Discrimination and Retaliation in the United States District Court for the Northern District of California, naming as defendants William J. Henderson, United States Postmaster General, the United States Postal Service, the United States Postal Service's San Mateo Information Center, Rich Lena, Bob Long, Susy Nakai, Tom Nesbitt, Cele Gutierrez, Administrative Law Judge Jeanne M.L. Player, Charlie Wambeke of Union Local 6669, and others. Not later than August of 1998, the Petitioner informed that United States District Court for the Northern District of California that he also requested of the Court that the violation, by the named defendants, of his rights as a Veteran also be given Judicial Notice by the Court.

By July of 1999, the Petitioner had filed not less than three separate lawsuits, In Pro Se, as based upon Racial Discrimination, Discrimination because of Disability, and Retaliation, against all of the named respondents, and derivative of the Petitioner's initial claims before the United States Equal Employment Opportunity Commission, in the United States District Court for the Northern District of California, and the Judge of the District Court had related the Petitioner's cases. The United States District Court for the Northern District of California concluded that notwithstanding that the Petitioner had apparently put forth his best effort, the Petitioner had failed to properly serve the defendants, and had failed to pursue all avenues available to him for the resolution of his complaints through his union.

The District Court held, further, that the Petitioner had not established that he had been discriminated against because of his race of sex, that the Petitioner had not established that he had been sexually harassed or subjected to a hostile work environment, and that the Petitioner had not shown any retaliation. The Court held that the Petitioner had failed to file necessary administrative claims, had failed to properly pursue his grievances through his union or seek his union's assistance at all, and that because the Petitioner had demonstrated no triable issue of fact, summary judgment had to be granted to all of the named defendants, as to all causes of action, in all three cases.

The Petitioner appealed from the decision of the District Court to the United States Court of Appeal for the Ninth Circuit, the Court of Appeal consolidating all three of the Petitioner's Appeals.

Holding of Court of Appeal

On December 27, 2001, the Court of Appeal affirmed the decision of the District Court, the Court of Appeal deciding that there existed no cause of action as against any of the individually named postal employees for the violation of Title VII of the Civil Rights Act of 1964; that the Postmaster General, the postal employee most properly named, had never been properly served and that all cause against the Postmaster general had been properly dismissed; that the District Court had properly dismissed all claims against the postal service; that the Petitioner had failed to adequately exhaust all available administrative remedies as to Title VII through his union, and had failed to present evidence of the union's breach of duty of fair representation; that the Petitioner had failed to present evidence of any other civil rights violations; and that the Petitioner had failed to state proper claims as against Administrative Law Judge Jeanne

M.L. Player. Adding that the District Court had in no way abused its discretion, the Court of Appeal concluded that the Petitioner's remaining claims on appeal, to include claims of Veterans preference, lacked merit and were also properly dismissed. (APPENDIX A.).

The United States Court of Appeal for the Ninth Circuit denied the Petitioner's Petition for Rehearing as petitioned for. (APPENDIX B.).

REASONS FOR GRANTING PETITION

No person shall be deprived of life, liberty, or property, without due process of law. **Amendment V, Constitution of the United States**. What is due process of law depends upon the circumstances varying with the subject matter and necessities of the situation. **Mover v. Peabody**, 212 U.S. 78, 53 L.Ed. 410, 29 S.Ct. 235 (1909).

No state shall by law deprive any citizen of the United States the privileges and immunities of law, nor shall any citizen of the United States be deprived of life, liberty, or property, without due process of law, nor shall any state deny citizens of the United States the equal protection of the laws. **Amendment XIV, Constitution of the United States**. Equal protection doesn't exist if the kind of an appeal that a person enjoys depends on the amount of money that he or she has. **Douglas v. People of the State of California**, 83 S.Ct. 814 (1963).

Pro Se litigants are held to less stringent standards than those who are counseled by attorneys. **U.S. v. Sanchez**, 88 F.3d 1243, 319 U.S. App. DC 180 (1996).

Questions of motives and states of mind raise factual issues that preclude summary judgment. **Sischo-Nownejad v.**

Merced Comm. College Dist., 934 F.2d 1104, 1111 (1991).

Where there hasn't been full opportunity for conducting discovery, and the evidence necessary for opposition to a motion for summary judgment or dismissal is, for the most part, in the moving party's possession and control, the opposing party's burden to produce evidence of material issues may be excused. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505, 2514 (1986).

The Petitioner is a Pro Se litigant who has attempted, himself, to pursue legal redress because he has been unable to afford legal counsel. The Petitioner, a layperson, a Veteran and representing himself, filed a first Complaint for Damages as based upon Racial Discrimination and Retaliation in the United States District Court for the Northern District of California.

By July of 1999, the Petitioner had, on his own, filed three lawsuits as based upon Racial Discrimination, Discrimination because of Disability, and Retaliation, against the named respondents, and derivative of the Petitioner's initial claims before the United States Equal Employment Opportunity Commission. The United States District Court for the Northern District of California concluded that with regard to his pursuit of legal redress, the Petitioner had apparently put forth his best effort.

Notwithstanding, the District Court held that the Petitioner, a layperson, had failed to properly serve the defendants, and had failed to pursue all avenues available to him for the resolution of his complaints through his union. The District Court held, further, that the Petitioner had not established that he had been discriminated against because of his race of sex, that the Petitioner had not established that he had been sexually harassed or subjected to a hostile work

environment, and that the Petitioner had not shown any retaliation. The Court held that the Petitioner had failed to file necessary administrative claims, had failed to properly pursue his grievances through his union or seek his union's assistance at all, and that because the Petitioner had demonstrated no triable issue of fact, summary judgment had to be granted to all of the named defendants, as to all causes of action, in all three cases.

The Court of Appeal affirmed the decision of the District Court, the Court of Appeal deciding that there existed no cause of action as against any of the individually named postal employees for the violation of Title VII of the Civil Rights Act of 1964; that the Postmaster General, the postal employee most properly named, had never been properly served and that all cause against the Postmaster general had been properly dismissed; that the District Court had properly dismissed all claims against the postal service; that the Petitioner had failed to adequately exhaust all available administrative remedies as to Title VII through his union, and had failed to present evidence of the union's breach of duty of fair representation; that the Petitioner had failed to present evidence of any other civil rights violations; and that the Petitioner had failed to state proper claims as against Administrative Law Judge Jeanne M.L. Player. Adding that the District Court had in no way abused its discretion, the Court of Appeal concluded that the Petitioner's remaining claims on appeal, to include claims of Veterans preference, lacked merit and were also properly dismissed.

Pro Se litigants are held to less stringent standards than those who are counseled by attorneys.

Questions of motives and states of mind raise factual issues that preclude summary judgment. There hasn't been full

opportunity for conducting discovery, essentially because the courts have, to date, refused to acknowledge that the defendants in the Petitioner's lawsuits have been served with adequate notice of the commencement of actions against them, notwithstanding the full participation of representatives of each of the named defendants.

According to law, the Petitioner's status as a litigant should have been given greater consideration by the lower courts, and summary judgment should never have been granted because the essential issues of the defendants cases evolved about the motivations and states of minds of the defendants with regard to the discriminatory activity of the defendants. The United States Court of Appeal for the Ninth Circuit, by its decision as submitted December 17, 2001, and subsequent denial of Rehearing, has denied the Petitioner the due process of law, the protection of the privileges and immunities of law, and the equal protection of the laws as prohibited against by the Fifth and Fourteenth Amendments to the Constitution of the United States. The United States Constitution and applicable law dictate that the Court of Appeal's December 17, 2001 decision was a substantial and significant departure from accepted and usual judicial proceedings?

CONCLUSION

For each and all of the reasons stated herein and above, a writ of certiroari must be issued by this United States Supreme Court

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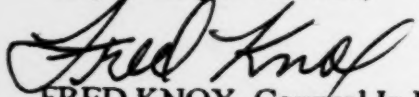
Respectfully submitted,



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APPENDIX A

APPENDIX A

RETYPED OPINION OF

THE UNITED STATES COURT

OF APPEALS FOR THE NINTH CIRCUIT

FRED KNOX,	**Nos. 00-17245**
	00-17253
Plaintiff-Appellant,	**00-17287**
v.	
	D.C. Nos. CV-98-
WILLIAM J. HENDERSON;* et. al.,	**0796-JL**
	CV-99-
Defendants-Appellees.	**1527-JL**
/	**CV-99-**
	4675-JL

MEMORANDUM**

Appeal from the United States District Court
For the Northern District of California
James Larson, Magistrate Judge, Presiding***

Submitted December 17, 2001****

*** Pursuant to Fed. R. App. P. 43(c)(2), Postmaster General William J. Henderson has been substituted as an appellant for former Postmaster General Marvin Runyon.**

**** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.**

(continued...)

Before: **SCROEDER, Chief Judge, TROTT AND PAEZ, Circuit Judges.**

Fred Knox appeals pro se the district court's dismissal of his action alleging race and sex discrimination against numerous defendants, including the U.S. Postal Service, the Equal Employment Opportunity Commission ("EEOC), and a labor union. We have jurisdiction pursuant to 28 U.S.C. 1291. We affirm.

The district court properly concluded that no cause of action exists against the individual postal employees for violations of Title VII, *See* 42 U.S.C. 2000e-16(c); *Mahoney v. United States Postal Service*, 884 F.2d 1194, 1196 (9th Cir. 1989) (recognizing that the only proper Title VII defendant is the head of the agency in which the

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******(...continued)**
***** The parties consented to propceed before a magistrate judge.**

******The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, appellant's request for oral argument is denied.**

alleged discrimination occurred).

Because Knox failed to timely and properly serve defendant Postmaster General and did not show good cause for the failure, the district court did not abuse its discretion in dismissing the Title VII cause of action, *See* Fed. R. Civ. P. 4(m), 4(i); *see also Boudette v. Barnette*, 923 F.2d 754, 755-56 (9th Cir. 1991).

The district court properly dismissed Knox's 42 U.S.C. 1981, 1985, 1986 and 29 U.S.C. 158 claims against the postal service. *See White v. General Services Admin.*, 652 F.2d 913, 916-17 (9th Cir. 1981) (holding that Title VII action against federal government provides the exclusive remedy for a federal employment discrimination action).

The union defendants were properly dismissed because Knox failed to exhaust administrative remedies as to the Title VII claim, *see Stache v. Int'l Union of Bricklayers*, 852 F.2d 1231, 1233-34 (9th Cir. 1988), failed to present evidence of a breach of the duty of fair

representation, *see Peterson v. Kennedy*, 771 F.2d 1244, 1253-55 (9th Cir. 1985) and failed to present evidence of 1985 violations, *see Dooley v. Reiss*, 736 F.2d 1392, 1395-96 (9th Cir. 1984). Without a valid section 1985 claim, the section 1986 must fail. *See Karim-Panahi v. Los Angeles Police Dep't.*, 839 F.2d 621, 626 (9th Cir. 1988).

The district court properly dismissed the action against defendants EEOC and Player, an EEOC administrative law judge, for failure to state a claim. *See Ward v. EEOC*, 719 F.2d 311, 313-14 (9th Cir. 1983) (recognizing no cause of action against the EEOC by employees of third parties).

The district court did not abuse its discretion in denying Knox's request for discovery. *See H20 Houseboat Vacations Inc. v. Hernandez*, 103 F.3d 914, 917 (9th Cir. 1996).

Because his case does not present exceptional circumstances on appeal, we deny Knox's request for

appointment of counsel. See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991).

Knox's motion to supplement the record is denied.

Knox'[s remaining contentions lack merit.

AFFIRMED.

APPENDIX B

APPENDIX B

APPENDIX B

RETYPED OPINION OF

THE UNITED STATES COURT

OF APPEALS FOR THE NINTH CIRCUIT

FRED KNOX,

Plaintiff-Appellant,

v.

WILLIAM J. HENDERSON;* et. al.,

Defendants-Appellees.

_____/

Nos. 00-17245
00-17253
00-17287

D.C. Nos. CV-98-0796-JL
CV-99-1527-JL
CV-99-4675-JL
Northern District of California
(San Francisco)

ORDER

Before: **SCROEDER, Chief Judge, TROTT AND PAEZ, Circuit Judges.**

The petition for rehearing is denied.

No further filings shall be accepted in this closed appeal.

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

Fred Knox-PETITIONER

VS.

William J. Henderson, et. al.,-RESPONDENTS

Fred Knox-PETITIONER

VS.

Rich Lena, et. al.,-RESPONDENTS

PROOF OF SERVICE

I, Fred Knox, do swear or declare that as of this date, _____, 2002, as required by Supreme Court Rule 29, I have served the PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding of that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

David A. Shapiro
Jocelyn Burton
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450 Golden Gate Avenue, 10th Floor
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Susan L. Catler
Peter J. Leff
O'DONNELL, SCHWARTZ & ANDERSON, P.C.
1300 L. Street, N.W. Suite 1200
Washington, D.C. 20005

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7-22-, 2002

Fred Knox

FRED KNOX-Petitioner In Pro Se